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FEB 15 2008

In re Application of	:	OFFICE OF PETITIONS
JAMES M. MCARDLE	:	
Application No. 10/645,039	:	DECISION ON PETITION
Filed: 08/21/2003	:	
Attorney Docket No. AUS920030607US1	:	

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT FINAL OFFICE ACTION NOT RECEIVED," filed January 18, 2008, which is being treated as a petition under 37 CFR 1.181 (no fee).

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the final Office action mailed May 21, 2007, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on January 8, 2008.

Petitioner asserts that the final Office action dated May 21, 2007, was not received.

A review of the written record indicates no irregularity in the mailing of the final Office action, and, in the absence of any irregularity, there is a strong presumption that the final Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. In this regard, the showing required to establish the failure to receive the final Office action must consist of the following:

1. a statement from practitioner stating that the final Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the final Office action was not received; and

3. a copy of the docket record where the non-received final Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center technical support staff of Art Unit 2165 for re-mailing the final Office action of May 21, 2007. The period for reply will run from the re-mailing date of the final Office action.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3211.

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